

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. (This is a GIL).

November 30, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated October 6, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY leases Ready Mix Trucks, Garbage Trucks, and Ready Mix Plants. Our corporate office is located in STATE. All of our leases meet the requirements of a true operating lease. It is our understanding that some states have an exemption for ready mix trucks and ready mix plants because these items are considered manufacturing equipment.

We are requesting a determination as to whether the following leases are exempt from sales/use tax in your state, and if they are exempt, do we need an exemption certificate from our customer.

1. A lease of a ready mix truck.
2. If the lease of a ready mix truck is taxable, do we collect tax on the lease payment or is the tax due at registration.
3. A Lease of a garbage truck
4. If the lease of a garbage truck is taxable, do we collect tax on the lease payment or is the tax due at registration.
5. If the lessee buys out the lease during the lease term, do we collect Sales/use tax at the time of the purchase or does the purchaser pay the tax when they register the vehicle.
6. If the lessee buys out the lease at the end of the lease, do we collect Sales/use tax at the time of the purchase or does the purchaser pay the tax when they register the vehicle.
7. A lease of a portable plant, mobile plant, or a central mix plant.

8. Is there any leasing license or special licenses needed to do business in your state?
9. Is there any personal property tax due on Ready mix trucks or Garbage trucks?

Please reply with your written response as to whether the above are exempt from sales/use tax.

Personal property tax was abolished in Illinois in 1979. Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3) enclosed.

Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree

to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

When lessees under true leases exercise fair market value purchase options, there are two possible treatments of these transactions. If the lessors of the tangible personal property are not engaged in the business of selling similar tangible personal property, the sales may be considered occasional sales conducted by the lessors that would not result in Retailers' Occupation Tax liability on the part of the lessors or Use Tax liability on the part of the lessees. See the enclosed copy of 86 Ill. Adm. Code 130.110. If, however, the lessors are in the business of selling similar tangible personal property, the sales will be treated as retail sales and would be subject to Retailers' Occupation Tax and Use Tax liability.

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330, enclosed. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation.

"Manufacturing" is defined as the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, which changes some existing material or materials into a material with a different use, form, or name. These changes must result from the process in question and be substantial and significant.

Generally, the use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold will be considered to constitute an exempt use under the manufacturing machinery and equipment exemption. Hand tools do not qualify for the exemption. However, pneumatic hand tools or electric powered hand tools used primarily in manufacturing or assembling may qualify for the exemption.

Ready-mix trucks generally qualify for the exemption, because a manufacturing process occurs in them. Sand, limestone, cement and water are mixed to produce concrete. The primary use of the trucks is to perform this manufacturing process. This is the reason the trucks are generally exempt. We do not know how portable plants, mobile plants or central mix plants work, therefore we are unable to rule on whether they are subject to tax.

Garbage trucks do not perform a manufacturing process, therefore they are not exempt from tax as manufacturing machinery or equipment. We have enclosed a copy of 86 Ill. Adm. Code 130.335 concerning Pollution Control Facilities. The pollution control facilities exemption extends to "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water

pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property."

Trucks do not qualify for the exemption because they are not used to prevent or eliminate air or water pollution. Rather, their primary purpose is the transportation of waste. Similarly, it cannot be said that trucks dispose of harmful waste, because they are merely used to transport waste to a site where that waste will be disposed.

In general, persons who sell tangible personal property to Illinois customers for use or consumption are making retail sales and should be registered under the Retailers' Occupation Tax Act. Retailers incur Retailers' Occupation Tax upon gross receipts and must file sales tax returns with this Department. Sellers of tangible personal property for the purpose of resale, and not for use, should obtain resale certificates from customers that contain the information required by 86 Ill. Adm. Code 130.1405, enclosed. If sellers of tangible personal property make no sales to end users in Illinois for use or consumption, they may be able to obtain resale numbers which would provide the wherewithal to supply required numbers to their suppliers in conjunction with Certificates of Resale.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items that will be resold. Acquisition of a resale number for this purpose does not require the filing of tax returns with the Department. Further information on this can be obtained from the Department's Central Registration Division at (217) 785-3707.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel